

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES
OFFICE OF PROJECT MANAGEMENT AND PERMITTING

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Dave Navecky
STB Finance Docket No. 35095
Surface Transportation Board
395 E Street S. W.
Washington, DC 20423-0001

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Dear Mr. Navecky:

Re: STB Finance Docket No. 35095, Alaska Railroad Corporation Construction and Operation of a Rail Line Extension to Port Mackenzie, Alaska; FINAL Environmental Impact Statement

The State of Alaska has reviewed the Surface Transportation Board's (STB's) FINAL Environmental Impact Statement (FEIS) for the Alaska Railroad Corporation's (ARRC) Port MacKenzie Rail Extension project. As you know, the State submitted scoping comments to the STB in March 2008 and comments on the DRAFT EIS on May 10, 2010 concerning a wide range issues with regard to fish passage, fragmentation of wildlife habitat, the presence of cultural sites, native allotments, state recreation areas and game refuges, water quality, historic land use patterns, and road/rail crossings.

State agencies have been working with the STB and the Alaska Rail Road Corporation (ARRC) to address access for traditional, recreational, and commercial activities, habitat concerns, and impacts to state managed agriculture activities. We appreciate the efforts of ARRC to minimize the overall impact of the proposed rail line, work with communities and user groups, and provide the necessary information to fully evaluate the proposed project. The comments in this letter represent the consolidated views of the state's resource agencies.

STATE AGENCY SPECIFIC COMMENTS

The Alaska Department of Fish and Game

The FEIS mitigation measures do not adequately address access issues and moose mitigation. The details of the mitigation have been left to be determined by working groups formed between the applicant, resource agencies, and user groups. The FEIS has no clear mechanism for resolving conflicts that may arise during this process, other than formally appealing any differences to the STB. Because of this limitation, the working groups should have been convened earlier in the EIS process and the results of those work sessions included in the scope of the project, as reviewed by the STB.

Comment 65-84

The ADF&G recommended the following new mitigation measure:

Free fish passage will be maintained across the project reach for the life of the project. This includes, but is not limited to, blockages through culverts and bridges caused by beaver activity and perched culverts.

The STB did not add this measure. The reason given was that it duplicates mitigation measure 16. Mitigation measure 16 reads as follows:

The Applicant shall ensure that all project-related culverts and bridges are sufficiently clear of debris to avoid blockages to free-fish passage (where applicable), stream-flow alteration, and increased flooding. The Applicant shall inspect all project-related bridges and culverts semi-annually (or more frequently, as seasonal flows dictate) for debris accumulation and remove and properly dispose of debris promptly.

We strongly disagree with the STB's conclusion that our recommendation duplicates mitigation measure 16. Although measure 16 provides for maintenance of fish passage due to debris blockages, it does not provide for maintenance due to perched culverts. High water events can erode the downstream stream bed near the outlet of culverts, thus resulting in artificially created plunge pools and the creation of perched culvert conditions. Simply saying the applicant will maintain water flow and remove debris does not mean fish passage will be maintained. We request the issue of perched culverts and fish passage be addressed in this mitigation measure or elsewhere as appropriate.

Mitigation Measures Deleted

The STB deleted mitigation measure 17 which read as follows:

During final design of the project, the Applicant shall conduct all siting, design, and development of the rail line and associated facilities according to the reasonable requirements within the jurisdiction of the Alaska Department of Natural Resources and the Alaska Department of Fish and Game.

The reason given for deleting this measure was that the agencies do not have standards for rail design and construction, so it was determined that the measure was unnecessary. While the ADF&G doesn't have specific standards for rail design, we do have standards for bridge and culvert construction, which are a significant component of the overall rail line construction. While each crossing structure is evaluated independently, we routinely require that crossing structures on specified anadromous systems be constructed to industry standards for stream simulation and adequate fish passage. We also have standards for general construction that includes the necessity of providing for erosion control during and after construction and revegetation measures when appropriate. We routinely require construction sequencing when stream diversions are necessary.

Mitigation Measure 33

The ADF&G recommended that a moose mitigation plan be developed prior to final engineering via an interagency working group. We provided the main points that the group should discuss and the types of mitigation the subsequent plan should cover.

The STB did not make the recommended changes to mitigation measure 33. However, they did address other issues (Highly Sensitive Areas and Invasive Plants) in our recommended manner with mitigation measures 23 and 29. The reason for this inconsistency remains unclear. The ambiguous language in the initial mitigation measure remains. Developing a strategy AFTER the railroad is designed and constructed could be insufficient and appears to circumvent the EIS process because it doesn't allow an analysis of full potential impacts. Further, the measure does not bind the applicant to any course of action, is ambiguous as to how much input resource agencies may have, and does not allow for public comment. It remains unclear how this mitigation measure is adequate to mitigate impacts to moose because it doesn't require that the plan for moose mitigation to be in place prior to the final design stage. This effectively prevents timely formulation of measures intended to avoid, minimize or mitigate impacts on moose and the incorporation of those measures into the overall project design.

Mitigation Measure 39

Prior to project-related construction, the Applicant shall consult with Alaska Department of Natural Resources (ADNR) and other appropriate agencies, including the Alaska Department of Fish and Game (ADF&G), and user groups to develop a plan to ensure construction activities occur during the most appropriate timeframe to limit, to the extent practicable, potential impacts on recreation activities. The plan shall be developed prior to completion of final engineering plans and following consultation with the ADNR, the ADF&G, other appropriate government agencies, and user groups to determine the location of all officially recognized trails that would be crossed by the rail line. The plan shall designate temporary access points if main access routes must be obstructed during project-related construction and include an agreed-upon number and location of access points as determined during consultation with applicable agencies.

We recommend that the plan or the portions of the plan that designate temporary public access be included in the Applicant's website.

Mitigation Measure 41

The ADF&G recommended that an access mitigation plan be developed prior to final engineering. The plan must outline what types of mitigation will be incorporated. Again, we provided the main points that the plan should cover.

The STB revised the mitigation measure differently than we recommended. We disagree with the changes and believe the response is inadequate to mitigate the impacts to local trails and access in general. The measure clearly defines an "officially recognized trail". It states that just because there is a recorded easement at a particular location, it may not qualify as an officially recognized trail. Section line easements, although not necessarily developed at this point, are in place to ensure future access to public resources and should be maintained.

If the presence of a recorded easement or ROW easement alone is not sufficient enough to designate an officially recognized trail, what are the criteria? This is not consistent with the definition of an official trail in the glossary in Appendix G.

This mitigation measure as written, poses a potential to eliminate future opportunities for growth as it will restrict these trail crossings (and these trails) to current use, whether referring to the level of use or the mode of use.

Applicant Voluntary Mitigation Measure 42 (VM-42)

ADF&G does not believe that on-site warning devices and/or signs specified in VM-42 are adequate to effectively notify boaters of project-related construction activities that would temporarily restrict watercraft traffic. In addition to the burden it would place on the public in spending time, money and resources to get to the location only to find access blocked, it could create serious safety concerns for river traffic. ADF&G recommends a two part solution that would better inform the public. VM-38 has indicated that the Applicant will maintain a Web site about the project throughout the construction period of the rail line. The Web site could also be used to disseminate information about any temporary restrictions on waterways. ADF&G also recommends that the Applicant advertise any temporary closures in local news papers, much like the Alaska Department of Transportation (ADOT) publishes notices of various road projects and the required detours during their road construction season.

Mitigation Measure 46

If the Surface Transportation Board authorizes the Mac West Segment, the Applicant shall consult with the Alaska Department of Fish and Game and the Alaska Department of Natural Resources to develop and implement measures, including consideration of replacing refuge acreage used for rail right-of-way, to minimize impacts to the Susitna Flats State Game Refuge to the extent practicable. (emphasis added)

While the preferred alternative in the FEIS is not likely to impact refuge lands, ADF&G continues to maintain that simply replacing refuge lands is not possible, because including new

lands or adjusting the boundary of Su-Flats State Game Refuge requires an act of legislation by the Alaska State Legislature.

Alaska DNR Division of Agriculture Comments

Figure S-2. Mac East, Mac West, and Connector Segments– identifies the locations of two potential Terminal Reserve areas, both south of the Point MacKenzie Agricultural Area (PMAA). The Division of Agriculture (DOAg) supports these locations.

1.3 Project Context - The proposed rail line would end at a terminal reserve (rail yard) approximately 2 or 3 miles, depending on the route that is authorized, from the existing Port MacKenzie docks. DOAg supports these locations depicted in the FEIS.

2.1 Proposed Action - Locations for communications towers and terminal reserve areas (rail yards and maintenance facility at the southern terminus of the proposed rail line) have been identified. DOAg supports these locations depicted in the FEIS

2.1.1.10 Associated Facilities – Terminal Reserve Area - ARRC would construct a terminal reserve area along the southern terminus of the rail line. This area would consist of yard sidings, storage areas, and a terminal building to support train maintenance. ARRC has proposed 2 terminal reserve areas, but would build only 1 depending on which alternative the Board authorized, if any. The terminal reserve area would be approximately 1,000 feet wide and approximately 9,800 feet long. The terminal reserve area for the Mac East and Mac East Variant Segment would also include relocation of a portion of Baker Farm Road, including construction of a grade-separated crossing of the proposed rail line, to provide vehicle access to the northern end of the terminal reserve area; construction of a road within the terminal reserve area; and construction of an approximately 1,500 foot access road, with a grade-separated crossing, between the terminal reserve area and Point MacKenzie Road along the northern edge of the Chugach Electrical Association transmission line ROW. DOAg supports this location depicted in the FEIS.

2.3.1.3 Mac East Variant - The Mac East Variant Segment would begin in the terminal reserve area and would proceed north along the side of a ridge along the east side of the Point MacKenzie Agricultural Project. DOAg supports this location depicted in the FEIS.

8.5.1.1 Common Impacts – Operation Impacts - The proposed rail line extension would include a terminal reserve (rail yard) at the end of the line in the Port MacKenzie District. The rail yard would provide for receiving, sorting, temporary storage, and distribution of commodities shipped on the rail line. Possible activities at the facility would include receiving inbound trains, switching rail cars, loading and unloading cars, storing commodities, and building and departing outbound trains. Other activities could include arriving/departing track maintenance equipment and operation of a switch locomotive and cargo handling equipment. DOAg supports these operational impacts at the terminal reserve location approved in the Final EIS.

13.1.5.1 Proposed Action - Operation Impacts to Land Use - Existing land ownership and use of the terminal reserve area, communications tower, and track siding locations would be

permanently changed to allow for these facilities associated with rail line operation and maintenance. DOAg supports the proposed location of the terminal reserve. DOAg is opposed to a terminal reserve location that would convert land with specific agricultural designations issued by the State of Alaska to protect the lands agricultural use in perpetuity, to one that would be permanently changed to allow for facilities associated with rail line operation and maintenance.

Comments regarding AK RR plan to locate the terminal reserve within the PMAA.

In the December 2010 Port MacKenzie Rail Extension Project Description Pre-Application document, titled "12_13_2010_PreAppMtg.pdf" the AK RR stated in the Terminal Reserve section:

Terminal Reserve

Upon review of the impacts associated with the potential long-term construction of the Terminal Reserve, the ARRC has proposed to relocate the facility from the former location shown in the DEIS to a new location immediately north of the Port District, within the Agricultural Project Area. By relocating the proposed Terminal Reserve, wetlands impacts would be reduced by 44.2 acres. The relocation remains dependent on future land acquisition and the feasibility of construction in the location shown in Figure 5.

The planned construction within the Terminal Reserve includes several long siding tracks, access roads, buildings, and facilities to provide for the origination and termination of trains to and from Interior Alaska. Without this facility trains would have to travel to Anchorage, and then make a return trip to Port MacKenzie, then back to Anchorage, before returning north to the interior. This would add approximately 192 miles (57 percent) traveled on an average trip to Fairbanks, and would make the operations infeasible.

The terminal reserve footprint has been estimated to be 1,000 feet by 10,000 feet which equals 229 acres. DOAg opposes the conversion of 229 acres of state designated agriculture land in order to protect 44.2 acres of wetland.

Alaska DNR Division of Mining Land and Water

Section Line Easements (SLE's)

Section lines are not adequately addressed in the FEIS. The section lines have been removed from the definition of an official trail. Recreational trails can coincide with SLE's, but SLE's are reserved for road use to agricultural parcels, private property, public lands and additional uses. If the removal of section lines from the "official trails" definition is to reflect this difference between a section line easement and a recreation trail, ADNDR agrees with this change. If the removal is meant to be a way to make section line easements unofficial trails, ADNDR does not agree. Please provide a clear statement on how section line easements are being addressed, are

they “official”, “unofficial” or something else in the FEIS? Unless a preexisting section line is formally vacated, it will attach to a land transfer document as a valid existing right.

The response to 65-12 (p23-172) does not address the 11 AAC 51.025 easements (section lines) and appears to more clearly address the 65-8 comment and RS2477’s, please clarify. Additionally, the 65-2 response (p23-194) does not specifically address the developed section line easement.

Definition of Official Trail

Since the definition of an Official Trail has changed since the EIS review, how is the project addressing non-recreation trails and rights-of-way (ROW)? There are easements/ROWs that are used to access public and private property, including private residences and agricultural parcels. How will the project address the potential creation of stranded inholdings, because the easement or ROW currently used is not recreation based? Would these parcels be considered remnant lands, even if they may not be directly adjacent to the rail line?

Agriculture Lands

The response to the crossing of agricultural lands by farm equipment may be inadequate. Many of the north/south section lines have been partially or fully vacated through the agricultural district. Requiring farmers to use the road crossings (which run east/west) could create large remnant parcels without legal access for an affected farmer that needs not only the ability to travel east/west, but north/south to connect to their property. While the FEIS maintains that remnant parcels would be purchased by the ARRC, ADNR was unsure if 40-60+ acre agricultural parcels were intended to be qualified remnants.

ADNR noted the following statement (or something similar) added in multiple locations pertaining to the agricultural covenants: “ROW acquisition would be the responsibility of the Applicant and, as such, the method used to eliminate or override the covenants preventing non-agricultural use of some land that would be crossed by the line also would be the responsibility of the Applicant (response to 65-22, p23-162).” What authorities are being used for the reversal of the agricultural covenants? The applicant is stated in the FEIS to be the ARRC or MatSu Borough. There is a difference on the methods available (or not available) in potentially reversing the agricultural covenants, depending on whether the applicant is a railroad or a governing entity.

Terminal Reserve

The location of the terminal reserve proposed by the ARRC and submitted to the State of Alaska places the reserve in the middle of the Port MacKenzie Agricultural Project and not at either location depicted in the commercial Port MacKenzie District reviewed by the STB for the EIS. The ARRC proposed location in the agricultural project encompasses at least two residences, multiple structures and blocks West Reddane Avenue. The FEIS does not adequately address the level of noise, pollution, loss of farm acreage, access, taking of multiple residences/outbuildings, the blocking of a road listed in the DEIS and FEIS as having a crossing (West Reddane Avenue)

and would alter the comparison of potential impacts between the alternatives reviewed. Additionally, the property owners, public and agencies were not notified during the EIS review that the terminal reserve could potentially be in the agricultural project, resulting in comments specific to this proposal not being included in the FEIS.

Section 4.2 Surface Water – The Final EIS describes the methodology utilized to identify surface water resources. This methodology utilized the US Geological Survey 2-Arc-second (30-Meter) digital elevation model (DEM). The Matanuska Susitna Borough is in the process of procuring LIDAR data that will provide a 1 meter DEM that should be available as early as August or September 2011. Acquisition of this data will provide a DEM with significantly more detail than that originally utilized for the analysis in the Draft and Final EIS.

Section 12.4 Affected Environment – On March 21, 2011 the Alaska Railroad submitted to the Division of Coastal Ocean Management (DCOM) a permit packet for this project. On March 25, 2011 Surface Transportation Board (STB) issued the final Environmental Impact Statement (FEIS). The data in both the permit application and the FEIS were reviewed for response to this section.

During review of the documents the Alaska Railroad submitted to DCOM specifically Attachment G, the 2010 Wetland Technical Report & Functional Assessment Addendum, several discrepancies were noted. During discussions with ENTRIX during the Draft EIS process and with the Railroads contractor, HDR, during initial design, the parties failed to discuss the large number of lakes which may possibly be impacted by this project. These discussions were specifically directed towards stream crossings and did not consider the many navigable and non-navigable lakes within the project corridor.

The Railroads contractor, HDR, provided a shape file that represents the estimated cut and fill for the proposed project; this file was utilized in combination with the wetlands mapping from the Wetland Technical Report to create the table below. This table describes lakes and ponds that should have been listed in the Draft EIS and Final EIS that may possibly be impacted by the preferred route of the proposed railroad extension. This analysis is of value for the final issuance of right-of-way this project.

Lake Name (GNIS_ID)	Location	Area (Acres)	Navigability Status	Land Status
Unnamed	S016S004W31	7.4	Non-Navigable (transferred to MSB)	Private
Unnamed	S016N005W36	36.57	Non-Navigable (transferred to MSB)	MSB
My Lake (01406743)	S016N005W25	72.65	Navigable/Meandered	MSB
Unnamed	S016N005W13	10.9	Non-Navigable (transferred to UA)	University of AK
Unnamed	S016N005W12	39.3	Non-Navigable (transferred to UA)	University of AK
Unnamed	S016N005W12	63.3	Navigable/Meandered	University of

				AK
Unnamed	S017N004W30	3.7	Non-Navigable (½ transferred)	MSB/DNR
Unnamed	S017N004W30	3.0	Non-Navigable (Transferred)	AK Mental Health Trust
Muleshoe Lake (01416988)	S017N004W10 & 11	130	Navigable/Meandered	DNR
Unnamed	S017N004W11	65.5	Navigable/Meandered	AK Mental Health Trust
Pear Lake (01407845)	S017N003W06	61.5	Not Shown as Meandered on MTP, > 50 acres should have been meandered.	Knikatnu Inc.

Section 0.5 Executive Summary – STB reviewed the project and selected the Environmentally Preferable Alternative as Mac East Variant (Mac Central), Connector 3 Variant, Houston, and Houston South, represented on Figure S-5 on page S-46. In the above mentioned permit packet submitted to DCOM by the AKRR significant changes to the route were presented. These changes included including the moving of the terminal reserve from the Port MacKenzie District to within the Point MacKenzie Agricultural Project, and moving Connector 3 Variant approximately one mile to the west. As mentioned in the comments from the Division of Agriculture moving the terminal reserve significantly impacts the limited amount of agricultural lands available. Moving the Connector 3 Variant approximately one mile west decreases the number of crossings in the Carpenter Lake area but may increase wetlands disturbance in the small lakes in Section 30, T. 16 N., R. 4 W., S.M. and Section 36, T. 16 N., R. 5 W., S.M. Alaska. These changes may have a significant impact on the area and should have analysis within the EIS process.

This concludes the State's response to the Port Mackenzie Rail Extension FINAL EIS. Please contact me at 269-7476 with any questions regarding these comments.

Sincerely,



Don Perrin
Project Management and Permit Coordinator
Alaska Department of Natural Resources

cc: Mike Bethe, ADF&G
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CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing State of Alaska comments on the Port Mackenzie Rail Extension Project Final Environmental Impact Statement were filed electronically today with the Surface Transportation Board and served by electronic based on the consent of each party, upon the following:

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DATED this 9th day of May 2011